

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

11 ROBERT HEATH,)
12 Plaintiff,) No. CV-05-548-HU
13 v.)
14 JOANNE B. BARNHART,)
Commissioner of Social)
Security,) OPINION & ORDER
16 Defendant.)
17 _____)

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1 - OPINION & ORDER

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5 HUBEL, Magistrate Judge:

6 Plaintiff Robert Heath brings this action for judicial review
 7 of the Commissioner's final decision to deny disability insurance
 8 benefits (DIB) and supplemental security income (SSI). This Court
 9 has jurisdiction under 42 U.S.C. §§ 405(g) and 1383(c)(3). Both
 10 parties have consented to entry of final judgment by a Magistrate
 11 Judge in accordance with Federal Rule of Civil Procedure 73 and 28
 12 U.S.C. § 636(c).

13 For the reasons set forth below, the Commissioner's decision
 14 is reversed and remanded for further administrative proceedings.

15 PROCEDURAL HISTORY

16 Plaintiff applied for DIB and SSI on February 4, 1999. Tr.
 17 6¹, 23, 66-69. His applications were denied initially and on
 18 reconsideration. Tr. 6, 54, 60.

19 On November 13, 2000, plaintiff, represented by counsel,
 20 appeared for a hearing before an Administrative Law Judge (ALJ).
 21 Tr. 673-98. In a May 23, 2001 decision, the ALJ found plaintiff
 22 not disabled. Tr. 593-600. On appeal, the Appeals Council

24 ¹ The List of Exhibits at the beginning of the
 25 Administrative Record lists several documents related to
 plaintiff's SSI application, including the initial application,
 initial disability determination, and a reconsideration
 determination. Tr. 6. A handwritten note states that "SSi [sic]
 26 Document [sic] are not Available for Inclusion." Id. Since
 27 these are documents over which there is no dispute, I do not
 28 concern myself with their absence.

1 determined that the ALJ had failed to properly assess the weight
2 given to various medical reports and failed to provide an adequate
3 rationale for concluding that there were no work-related
4 limitations. Tr. 628-30. The Appeals Council concluded that the
5 ALJ's finding that plaintiff had no severe impairment, was not
6 supported by the current evidence of the record. Id. The Appeals
7 Council remanded the case back to the ALJ.

8 A different ALJ conducted a second hearing on August 6, 2002.
9 Tr. 699-741. Plaintiff was again represented by counsel. Id. On
10 November 7, 2002, the ALJ issued a decision finding plaintiff not
11 disabled. Tr. 635-46.

12 On July 11, 2003, the Appeals Council remanded the case back
13 to the ALJ for three purposes: (1) to obtain additional evidence
14 regarding plaintiff's musculoskeletal conditions²; the additional
15 evidence could include, if warranted and available, a consultative
16 orthopedic examination and medical source statements about what
17 plaintiff can still do despite his impairments; (2) to obtain
18 evidence from a medical expert, if necessary, to clarify the nature
19 and severity of the plaintiff's impairment; and (3) to obtain
20 supplemental evidence from a vocational expert to clarify past
21 relevant work and to determine whether the claimant had acquired
22 any skills that are transferable to other occupations under the

24 ² This was prompted by the Appeals Council's observation
25 that new evidence indicated that the plaintiff fractured his
26 right hip after the second ALJ hearing, possibly due to an
27 osteoporosis condition. Tr. 651. The Appeals Council noted that
28 while the undisplaced fracture was expected to heal, it was
unclear whether the new condition would interfere with
plaintiff's ability to perform medium work, as found in the ALJ's
Id.

guidelines in Social Security Ruling 82-41. *Id.*

Plaintiff appeared before an ALJ³ for the third time, again with counsel, on April 22, 2004. Tr. 742-65. On August 24, 2004, the ALJ issued a decision finding plaintiff disabled beginning April 10, 2003, and continuing, but not disabled before that date. Tr. 18-40. The Appeals Council denied plaintiff's request for review of the ALJ's decision. Tr. 8-10.

FACTUAL BACKGROUND

Plaintiff alleges disability, commencing September 30, 1989, based on post-traumatic stress disorder (PTSD), back pain, gout, and heart problems. Tr. 75. At the time of the third hearing, on April 22, 2004, plaintiff was fifty-four years old. Tr. 67. He is a high school graduate. Tr. 678. His past relevant work is as an auction yardman, tree planter, construction millwright, automobile technician, and forklift operator. Tr. 37, 97, 758-69.

As explained below, plaintiff seeks to remand this case to the ALJ for failure to comply with the Appeals Council's July 11, 2003 directives, and for failure to accurately infer the onset date of plaintiff's disability, as defined in the Social Security Act. Given the fairly narrow issues raised by plaintiff, I will address the relevant factual evidence in conjunction with a discussion of plaintiff's arguments.

THE ALJ'S AUGUST 24, 2004 DECISION

The ALJ first determined that plaintiff had not engaged in any substantial work activity since his alleged September 30, 1989

³ The ALJ who conducted this third hearing was the same one who conducted the first hearing.

1 onset date. Tr. 25, 38. The ALJ found that plaintiff had severe
2 impairments of PTSD, peripheral neuropathy, diabetes mellitus, and
3 degenerative disk disease. Tr. 31, 39. However, he found that
4 none of plaintiff's impairments, or combination of impairments, met
5 or equaled a listed impairment. Id.

6 Next, the ALJ determined plaintiff's residual functional
7 capacity. The ALJ concluded that as of April 10, 2003, plaintiff
8 was limited to sedentary work due to difficulty with walking and
9 standing. Tr. 36, 39. Prior to that date, however, the ALJ
10 concluded that plaintiff retained the residual functional capacity
11 to lift and carry fifty pounds occasionally and twenty-five pounds
12 frequently, to sit for six hours in an eight-hour workday, and to
13 stand and/or walk for six hours in an eight-hour workday, with no
14 limitations related to pushing and pulling with his lower or upper
15 extremities. Tr. 37, 39. In addition, plaintiff was limited to
16 simple, routine, repetitive work that did not require more than
17 occasional interaction with coworkers or the public. Id.

18 The ALJ, relying on the testimony of a vocational expert (VE),
19 then determined that plaintiff was capable of performing his past
20 relevant work as a forklift operator and janitor prior to April 10,
21 2003. Id. After that date, however, because of the limitation to
22 sedentary work, the ALJ determined that plaintiff was unable to
23 perform his past relevant work. Id. When plaintiff's age,
24 education, and work experience were examined in combination with
25 his residual functional capacity, the ALJ found that Medical-
26 Vocational Rule 201.14 ("the grids"), directed a conclusion of
27 disability. Tr.39-40.

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1 STANDARD OF REVIEW & SEQUENTIAL EVALUATION
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3 A claimant is disabled if unable to "engage in any substantial
4 gainful activity by reason of any medically determinable physical
5 or mental impairment which . . . has lasted or can be expected to
6 last for a continuous period of not less than 12 months[.]" 42
7 U.S.C. § 423(d)(1)(A). Disability claims are evaluated according
8 to a five-step procedure. Baxter v. Sullivan, 923 F.2d 1391, 1395
9 (9th Cir. 1991). The claimant bears the burden of proving
10 disability. Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir.
11 1989). First, the Commissioner determines whether a claimant is
12 engaged in "substantial gainful activity." If so, the claimant is
13 not disabled. Bowen v. Yuckert, 482 U.S. 137, 140 (1987); 20
14 C.F.R. §§ 404.1520(b), 416.920(b). In step two, the Commissioner
15 determines whether the claimant has a "medically severe impairment
16 or combination of impairments." Yuckert, 482 U.S. at 140-41; see
17 20 C.F.R. §§ 404.1520(c), 416.920(c). If not, the claimant is not
disabled.

18 In step three, the Commissioner determines whether the
19 impairment meets or equals "one of a number of listed impairments
20 that the [Commissioner] acknowledges are so severe as to preclude
21 substantial gainful activity." Yuckert, 482 U.S. at 141; see 20
22 C.F.R. §§ 404.1520(d), 416.920(d). If so, the claimant is
23 conclusively presumed disabled; if not, the Commissioner proceeds
24 to step four. Yuckert, 482 U.S. at 141.

25 In step four the Commissioner determines whether the claimant
26 can still perform "past relevant work." 20 C.F.R. §§ 404.1520(e),
27 416.920(e). If the claimant can, he is not disabled. If he cannot
28 perform past relevant work, the burden shifts to the Commissioner.

1 In step five, the Commissioner must establish that the claimant can
2 perform other work. Yuckert, 482 U.S. at 141-42; see 20 C.F.R. §§
3 404.1520(e) & (f), 416.920(e) & (f). If the Commissioner meets its
4 burden and proves that the claimant is able to perform other work
5 which exists in the national economy, he is not disabled. 20
6 C.F.R. §§ 404.1566, 416.966.

7 The court may set aside the Commissioner's denial of benefits
8 only when the Commissioner's findings are based on legal error or
9 are not supported by substantial evidence in the record as a whole.
10 Baxter, 923 F.2d at 1394. Substantial evidence means "more than a
11 mere scintilla," but "less than a preponderance." Id. It means
12 such relevant evidence as a reasonable mind might accept as
13 adequate to support a conclusion. Id.

14 DISCUSSION

15 Plaintiff seeks to remand this case to the ALJ for alleged
16 errors by the ALJ in not complying with the July 11, 2003 remand
17 order from the Appeals Council, and in failing to properly assess
18 his disability onset date. Plaintiff states that his disability is
19 based on a combination of multiple physical and mental impairments
20 and that his disability began on September 30, 1989, or some
21 alternative date prior to April 10, 2003.

22 In regard to the July 11, 2003 Appeals Council remand order,
23 plaintiff's specific argument is that the ALJ did not comply with
24 the Council's directive regarding plaintiff's musculoskeletal
25 condition. Tr. 651-52. As noted above, in its July 11, 2003
Order, the Appeals Council remarked that after the August 2002
hearing before the ALJ, plaintiff suffered a right hip fracture,
possibly due to an osteoporosis condition. Id. Thus, it ordered

1 the ALJ, upon remand, to "[o]btain additional evidence concerning
2 the claimant's musculoskeletal conditions" in order to "clarify the
3 work restrictions associated with the musculoskeletal conditions."
4 Id. It noted that the "additional evidence may include, if
5 warranted and available, a consultative orthopedic examination and
6 medical source statements about what the claimant can still do
7 despite the impairments." Id. (emphasis added).

8 Plaintiff contends that the ALJ ignored the Appeals Council's
9 order to investigate his musculoskeletal condition and thus, he
10 violated his duty to fully and fairly develop the record.

11 In response, defendant contends that additional evidence was
12 supplied by plaintiff's attorney, in three submissions prior to the
13 third ALJ hearing, labeled Exhibits 16F, 17F, and 18F and found in
14 the Administrative Record at Tr. 488-567, 568-80, and 581-92,
15 respectively. Defendant states that the ALJ reviewed these records
16 in his decision, and particularly addressed the right-side hip pain
17 and fracture. Defendant states that the ALJ noted that the record
18 as a whole indicated that plaintiff remained active, was able to
19 stand or walk during much of the day, that his hip fracture healed
20 without complication, and that there was progressive improvement in
21 pain and ambulation.

22 Defendant argues that there are no other medical records to be
23 obtained since plaintiff himself provided the most recent Veterans'
24 Administration (VA)⁴ records and identified no others. Defendant
25 further argues that while the Appeals Council suggested that a
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27 ⁴ Almost all of plaintiff's medical treatment has been
28 provided by the VA.

1 consultative examination might be appropriate, such an examination
2 would have provided a report of plaintiff's condition only as of
3 the time of the examination. Because the ALJ found plaintiff
4 disabled beginning April 10, 2003, which was before the Appeals
5 Council's July 11, 2003 Order, it was not error to forgo another
6 examination because a later examination would have served no useful
7 purpose.

8 I agree with defendant. In his decision, the ALJ discussed
9 the medical records submitted by plaintiff following the previous
10 hearing in August 2002, and which cover plaintiff's medical
11 treatment following his September 2002 hip fracture. Tr. 488-567
12 (VA medical records from October 23, 2002, to August 22, 2003); Tr.
13 568-580 (VA medical records from October 15, 2003); Tr. 581-92 (VA
14 medical records from July 22, 2003).

15 The ALJ first discussed plaintiff's hip fracture as follows:

16 In October 2002, the claimant reported severe right-sided
17 hip pain with an acute onset in August 2002. He reported
no history of trauma or falls. An MRI showed a non-
18 displaced intertrochanteric fracture of the right femur.
(Exhibit 16F/79). The claimant agreed to non-weight
bearing and to remain on crutches to prevent displacement
19 of the fracture. (Exhibit 16F/74-75). The claimant
underwent a number of tests to determine the cause of the
fracture, which were all normal. However, an EMG in
20 January 2003 showed moderate to severe peripheral
neuropathy. (Exhibit 16F/72). By late January 2003, the
claimant was doing well, with no significant or ongoing
21 hip pain. He began weight bearing and refused physical
therapy. (Exhibit 16F/71-73).

22 Tr. 29.

23 The ALJ then noted that in February 2003, during a
24 hospitalization related to chest pain, plaintiff reported that his
25 hip pain had resolved. Id. The ALJ then noted that later in
26 February 2003, plaintiff was referred to endocrinology for
27

1 evaluation of osteoporosis. Id. (citing Exh. 16F/34, 27, 5). As
2 the ALJ explained, plaintiff was thought to be at high risk for
3 osteoporosis, but he was started on treatment with Alendronate⁵,
4 which he tolerated well. Id. The ALJ noted that the medical
5 records indicated that plaintiff reported his hip pain at that time
6 as "2/10" and he walked two to three blocks, three or four times
7 per day. Id. (citing Exh. 1 6F/34).

8 Finally, in assessing plaintiff's residual functional
9 capacity, the ALJ expressly noted that "it appears that the
10 claimant's hip fracture in August 2002 healed without complication,
11 and he was able to ambulate without crutches by January 2002 and
12 reported resolved pain in February 2003." Tr. 36 (citing Exh.
13 16F/53).

14 The record shows that the ALJ examined the subsequent medical
15 evidence and thus, complied with the Appeals Council's order that
16 additional evidence regarding the osteoporosis condition be
17 obtained and reviewed. The record shows that the ALJ noted the
18 relevant facts regarding plaintiff's hip, including the level of
19 pain, the new prescription which he tolerated well, and his level
20 of activity in regard to walking. Thus, the ALJ analyzed the
21 relevant evidence and assessed the impact of the condition on
22 plaintiff's ability to work. Moreover, as defendant notes, a
23 consultative examination, which was suggested by the Appeals
24 Council as only a possibility, would have provided an evaluation of
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26 ⁵ Alendronate is used to treat osteoporosis by preventing
27 bone breakdown and increasing bone density to make bones stronger
28 and less likely to break. <http://www.nlm.nih.gov/medlineplus/druginfo/medmaster/a601011.html>

1 plaintiff as of a specific date in time, a time which fell after
2 the April 10, 2003 date the ALJ determined as the disability onset
3 date. Thus, even had the ALJ been obligated to obtain a
4 consultative examination from an orthopedic specialist, his failure
5 to do so was harmless because any information provided by the
6 specialist would be relevant only to the period in which the ALJ
7 had concluded plaintiff was disabled.

8 Next, plaintiff argues that the ALJ erred in determining that
9 plaintiff became disabled as of April 10, 2003. I agree.

10 The ALJ noted plaintiff's assertion that his disability began
11 in September 1989. Tr. 33. The ALJ remarked that there was very
12 little objective medical evidence in the record of an ongoing
13 medically determinable physical impairment or impairments that
14 resulted in significant vocationally relevant limitations prior to
15 the date plaintiff was last insured for DIB, December 31, 1995.
16 Id. The ALJ also remarked that it did not appear that the
17 plaintiff was diagnosed with PTSD until early 1996. Id.

18 The ALJ noted that plaintiff underwent numerous evaluations
19 over the years related to his disability claim with the VA. Id.
20 However, the ALJ explained, "those evaluations do not support the
21 claimant's assertion of disability until the [VA] found the
22 claimant 100% disabl[ed] as of April 10, 2003, based on evaluations
23 performed in July 2003." Id. The ALJ noted that at that time, in
24 addition to PTSD, plaintiff's physical impairments had worsened and
25 there was evidence of peripheral neuropathy of his hands, as well

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1 as his feet. *Id.* Also, the ALJ stated, claudication⁶ was found.

2 *Id.*

3 The ALJ then explained:

4 Dr. Acevedo opined that the claimant's physical
 5 impairments, including and particularly claudication,
 6 limited him to sedentary work that did not require good
 7 finger sensation. Dr. Holm opined that due to mental
 8 impairments, the claimant could not perform work
 9 requiring interactions with others. Although the
 undersigned has considered and accepts the Veterans
 Administration's conclusion of disability as of April 10,
 2003, the longitudinal record and the objective medical
 evidence of record do not support the claimant's
 assertion of disability prior to such date.

10 *Id.*

11 The problem with the ALJ's reliance on the April 10, 2003 date
 12 is that the date is tied to an application plaintiff made to the VA
 13 for an increase in his VA disability rating, based on, presumably,
 14 plaintiff's belief that his symptoms, obviously occurring before
 15 the application date, justified the increase. As plaintiff notes
 16 in his memorandum, there is nothing physically or emotionally that
 17 occurred to plaintiff on that date and thus, the date is arbitrary
 18 and not tied to the relevant evidence in the record. I agree with
 19 plaintiff.

20 Plaintiff's VA disability ratings have increased over time.
 21 E.g., Tr. 256 (Nov. 1996 request for review of an April 22, 1996
 22 examination refers to no rated disabilities as of time of request);

24 ⁶ Claudication is a reference to limping occurring from leg
 25 cramps caused by poor circulation and blockage of blood in leg
 26 arteries which produces an aching, tired, and sometimes burning
 27 pain the legs. The pain is brought on by exercise and relieved
 28 by rest. Symptoms often get worse over time. It can be caused
 by atherosclerosis (which in turn can occur for many reasons,
 including diabetes), or peripheral vascular disease.

<http://www.nlm.nih.gov/medlineplus/article/003184.htm>

1 351 (Jan. 13, 1997 award of 10% disability for PTSD effective March
2 11, 1996, date of original disability claim); 348 (March 5, 1998
3 increase in PTSD disability award from 10% to 30%, effective August
4 12, 1997, date claim for increase received); 343 (July 22, 1999
5 decision continuing the PTSD disability rating at 30%); Tr. 485-88
6 (Mar. 25, 2003 rating decision awarding 20% disability for diabetes
7 associated with herbicide exposure, effective May 8, 2001; awarding
8 20% disability for left lower extremity peripheral neuropathy,
9 effective May 8, 2001; and awarding 20% disability for right lower
10 extremity peripheral neuropathy, effective May 8, 2001); Tr. 574-80
11 (October 3, 2003 rating decision awarding 30% disability for left
12 upper extremity peripheral neuropathy, effective Apr. 10, 2003;
13 awarding 30% disability for right upper extremity peripheral
14 neuropathy effective Apr. 10, 2003; increasing disability rating
15 for left lower extremity peripheral neuropathy from 20% disabling
16 to 40% disabling, effective Apr. 10, 2003; increasing disability
17 rating for right lower extremity peripheral neuropathy from 20%
18 disabling to 40% disabling, effective Apr. 10, 2003; and
19 maintaining PTSD disability rating at 50%).

20 The VA records reveal that typically, when a request for a
21 rating increase is sought, the VA undertakes a review of medical
22 records, may obtain additional medical evaluations and
23 consultations, and then issues a decision. Notably, when the
24

25 ⁷ The record does not appear to contain the actual decision
26 increasing the PTSD rating from 30% to 50% but clearly, if the
27 October 3, 2003 rating decision refers to maintaining the 50%
28 rating, the rating increased to 50% sometime between March 1998,
when the 30% was initially awarded (and which was effective as of
August 1997), and October 2003.

rating is increased, the increase is made effective as of the date the claimant applied for the increase.

As the ALJ noted in his decision, on April 10, 2003, plaintiff filed a claim with the VA for increased benefits. Tr. 30. The decision on that claim was issued in October 2003, but was effective as of the date the claim was filed. Tr. 31, 574-80. The ALJ further noted that the VA's impairment rating did not indicate that plaintiff's physical impairments had limited him to sedentary work until April 2003. Tr. 36. The ALJ then concluded that, "giving consideration to the conclusions of the Veterans Administration, the undersigned concludes that the claimant was limited to sedentary work as of April 10, 2003 due to difficulty with walking and/or standing." Id. "However, prior to that time, the record as a whole indicates that the claimant remained active and was able to stand and/or walk during much of the day." Id.

The problem with the ALJ's reliance on the VA's impairment rating decision is that the VA's effective date is based entirely on the date plaintiff submitted his claim for a rate increase. The date has no direct correlation to the underlying medical evidence. Clearly, the VA determined that medical evidence supported the rate increase as of that date. However, it is not determinative of whether plaintiff may have been disabled, for purposes of the Social Security Act, before that date. For example, if plaintiff had filed his rate increase claim in January 2003⁸, or in July 2002, the VA may well have made the rate increase effective as of

⁸ An electromyogram (EMG) performed in January 2003 showed moderate to severe peripheral neuropathy. Tr. 29.

1 either of those dates. Then, the ALJ might have concluded that
2 plaintiff was disabled for the purposes of Social Security as of an
3 earlier time. The point is that the VA's effective date is
4 arbitrary, in the sense that it is tied to the act of filing a
5 claim and is not related to the underlying evidence demonstrating
6 when the claimant's impairments actually became disabling.

7 Thus here, while the ALJ discusses some of the medical
8 evidence, it is clear from his decision that he relied heavily on
9 the VA's April 10, 2003 disability rate increase effective date to
10 determine plaintiff's disability status under the Social Security
11 Act. Because that date is not reflective of the actual medical
12 evidence, it was error for the ALJ to rely on it.

13 Moreover, as the Ninth Circuit has held, Social Security
14 Ruling (SSR) 83-20 requires the ALJ to call upon the services of a
15 medical advisor to assess the onset date in cases such as this.
16 SSR 83-20 addresses determinations of onset date in disabilities of
17 non-traumatic origin. SSR 83-20 (located at 1983 WL 31249). In
18 the first instance, the onset determination involves consideration
19 of the applicant's allegations, work history, if any, and the
20 medical and other evidence concerning impairment severity. Id. at
21 *2. "The medical evidence serves as the primary element in the
22 onset determination." Id.

23 The ruling explains that

24 [w]ith slowly progressive impairments, it is sometimes
25 impossible to obtain medical evidence establishing the
26 precise date an impairment became disabling. Determining
27 the proper onset date is particularly difficult, when,
28 for example, the alleged onset and the date last worked
are far in the past and adequate medical records are not
available. In such cases, it will be necessary to infer
the onset date from the medical and other evidence that
describe the history and symptomatology of the disease

1 process.

2 Id.

3 The regulation further notes that in many cases, precise
4 evidence of onset date will not be available and instead, the ALJ
5 will need to infer an onset date from the available medical
6 evidence. Id. at *3. "How long the disease may be determined to
7 have existed at a disabling level of severity depends on an
8 informed judgment of the facts in the particular case." Id.
9 Notably, the rule then provides that "[a]t the hearing, the [ALJ]
10 should call on the services of a medical advisor when onset must be
11 inferred." Id.

12 The Ninth Circuit has held that the regulation's reference to
13 "'should' means 'must.'" Armstrong v. Commissioner, 160 F.3d 587,
14 590 (9th Cir. 1998) (citing DeLorme v. Sullivan, 924 F.2d 841, 848
15 (9th Cir. 1991)). As explained in DeLorme: if the "medical
16 evidence is not definite concerning the onset date and medical
17 inferences need to be made, SSR 83-20 requires the administrative
18 law judge to call upon the services of a medical advisor and obtain
19 all evidence which is available to make the determination."
20 DeLorme, 924 F.2d at 848. The ALJ erred by not calling a medical
21 advisor to assist in the determination of plaintiff's onset date.

22 According to the ALJ, prior to April 10, 2003, plaintiff was
23 apparently able to engage in medium exertion work, with the
24 residual functional capacity to lift and carry fifty pounds
25 occasionally and twenty-five pounds frequently, to sit for six
hours in an eight-hour workday, and to stand and/or walk for six
27 hours in an eight-hour workday, and then, the very next day,
28 plaintiff's condition deteriorated to the point where he could

1 engage in only sedentary work. This scenario is completely
2 inconsistent with the progressive nature of plaintiff's
3 impairments, which more likely than not, produced a more gradual
4 reduction in plaintiff's physical capacities.

5 CONCLUSION

6 The Commissioner's decision is reversed and remanded to the
7 ALJ for the limited purpose of determining, with the assistance of
8 a medical advisor, the appropriate onset date of plaintiff's
9 disabling impairments.

10 IT IS SO ORDERED.

11 Dated this 10th day of April, 2006.

14 /s/ Dennis James Hubel
15 Dennis James Hubel
16 United States Magistrate Judge